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STATE FOR EB/CIP, EAP/MLS  
USTR FOR BARBARA WIESEL, JONATHAN MCHALE  
JUSTICE FOR STUART CHEMTOB  
COMMERCE FOR JEAN KELLY, JULIET BENDER, AND ERIC HOLLOWAY  
TREASURY FOR OSIA  
STATE PLEASE PASS TO USTR

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SUBJECT: THAI TELECOM SECTOR REFORM: NTC ISSUES LICENSES  
WITHOUT CONCESSION CONVERSION

REF: A. 04 BANGKOK 2189

[B](#). 05 BANGKOK 6901

[C](#). 05 BANGKOK 7043

[D](#). 05 BANGKOK 7124

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[1](#)1. (U) SUMMARY: Thailand,s telecom sector has long been defined by the co-existence of its state owned enterprises TOT and CAT, and several private companies doing business under concessions granted by the state owned enterprises (SOEs). While the concessions brought competition into the Thai telecom market, they also constitute a barrier to free and open competition in the market. Rather than tackle the problem of concession conversion head-on, the one year-old National Telecommunications Commission (NTC) has opted instead to issue new licenses, particularly for third-generation (3G) mobile services, which promises to facilitate the gradual unwinding of the telecom concessions while enabling existing players first crack at the next-generation market. This approach avoids a bruising conflict over concession conversion, but it is economically inefficient and wasteful of resources because Thailand,s existing telecom infrastructure has not yet outlived its useful life. The principal regulatory variable affecting the extent of such inefficiency\*or the length of the wait for rollout of 3G\*is an ongoing dispute over formation the National Broadcasting Commission, whose approval is required by law for allocation of frequencies. On telecommunications issues where it has sole authority, the NTC has established itself as the regulator for the telecom industry during its first year, and we expect that Royal Thai Government (RTG) positions on telecom issues in the pending Free Trade Agreement negotiations will accord closely with the regulatory guidance the NTC has issued to date. END SUMMARY

THE DUAL STRUCTURE OF THAILAND'S TELECOM SECTOR

[1](#)2. (U) Thailand's telecommunications operators have historically existed as state-owned enterprises (SOEs). The Telecommunications Organization of Thailand was established by statute in 1954 to provide domestic telephony services, and the Communications Authority of Thailand was established in 1976 by a separate law to provide international telephone services as well as postal services and other non-voice

telecommunications services. This division of authority has blurred as new technologies not envisioned by existing laws, such as mobile phone and satellite services, have emerged. As Thailand's economy boomed during the 1980s, however, the two SOEs proved unable to meet the nation's growing demand for telecommunications services.

13. (U) From 1986 through the mid-1990s, the RTG introduced competition into the telecom sector to increase supply. The state-owned telcos granted several concessions to private companies on a build-transfer-operate (BTO) contract basis (REF A). Under the BTO contracts, the private contracting party established telecommunications networks at their own expense, including installation, handing of network assets, and their operation. Upon completion of the concession period, all assets are to be transferred to the concession grantor. Revenue sharing arrangements for each concession have differed, based on the proposals and negotiations at the time of tender.

14. (U) Set out below is a list of concessions currently in force is set out below. (Note: The RTG corporatized TOT Public Company Limited (TOT) and CAT Telecom Public Company Limited (CAT) by issuing shares still owned by the government in 2002 and 2003 respectively. End note.)

#### Telecommunications Concessions for Basic (Fixed-Line Telephone) Services:

Operator: True Corporation (formerly Telecom Asia)  
Grantor: TOT  
Service: Installation of 2.6 million numbers in Bangkok and its vicinity  
Concession Period: 25 years (from October 1992 to 2017)  
Revenue Sharing: 16 percent (2 million numbers); 21 percent (600,000 numbers)

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Operator: TT&T  
Grantor: TOT  
Service: Installation of 1.5 million numbers in provincial areas  
Concession Period: 25 years (October 1993 to 2018)  
Revenue sharing: 43.1 percent (1 million numbers); 44.5 percent (500,000 numbers)

#### Telecommunications Concession for Mobile Telephone Services:

Operator: AIS  
Grantor: TOT  
Network: 900 GSM  
Concession Period 25 years (starting in 1990)  
Revenue Sharing: Years 1-5: 15 percent; years 6-10: 20 percent; years 11-15: 25 percent; years 16-25: 30 percent

Operator: TAC (DTAC brand)  
Grantor: CAT  
Network: 1800 GSM  
Concession Period: 27 years (starting in 1990)  
Revenue Sharing: Years 1-4: 12 percent; year 5: 25 percent; years 6-15: 20 percent; years 16-20: 25 percent; years 21-17: 30 percent; plus network (TOT) connecting fee of Bt. 200/number/month

Operator: TA Orange  
Grantor: CAT  
Network: 1800 GSM  
Concession Period: 16 years (starting 1999)  
Revenue Sharing: Year 1: 25 percent; years 2-9: 20 percent; years 10-14: 25 percent; years 15-16: 30 percent; plus network (TOT) connecting fee of Bt. 200/number/month

Operator: Digital Phone Co. (DPC)  
Grantor: CAT  
Network: 1800 GSM

Concession Period: 16 years (starting 1999)  
Revenue Sharing: Year 1: 25 percent; years 2-9: 20 percent;  
years 10-14: 25 percent; years 15-16: 30 percent

15. (U) The dual structure that has resulted from these concessions has added to the challenge of reforming Thailand's telecom sector, because the concessionaires must both compete with TOT and CAT while at the same time submitting to their regulation and making revenue sharing payments to them. Fundamental to establishing a regulatory environment that is open to free and fair competition is the conversion of the concessions to licenses. Owing to the difficulty of effecting concession conversion, the concessions are known as the Gordian knot of telecom sector reform.

#### THE MASTER PLAN FOR TELECOM REFORM

16. (U) Although the Telecom Master Plan has undergone several revisions since its initial adoption in 1997, the basic goals envisioned at the outset have guided public discussions and expectations for reform. These aims include: establishment of an independent national regulatory body, the conversion of build-transfer-operate (BTO) concessions granted by TOT and CAT to private operators into NTC-issued licenses; the privatization of TOT and CAT; the liberalization of the telecom market to allow competition according to a process regulated by the NTC. In the international context, the point to emphasize is that the RTG has pledged to liberalize its telecom market consistent with World Trade Organization criteria by 2006.

#### THE NTC'S FIRST YEAR

17. (U) On November 1, 2005, the National Telecommunications Commission marked its first anniversary. In the face of low expectations, the NTC can count several achievements to its credit. It has formulated the Telecom Master Plan for 2005-2007, published in the Royal Gazette on August 3, 2005.

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It has established licensing criteria for the three types of telecommunications licenses it may issue: Type I (without network), Type II (with or without network for specific groups or users), and Type III (with network for public telecommunications services). It has set criteria for allocation of telephone numbers. It has established license criteria, license fees, and interconnection charges for internet service providers (ISPs). It has set temporary measures for radio frequency allocation. It has also issued licenses as noted in paragraph no. 9 below. While much remains to be done, the NTC has without question established itself as the source of regulatory guidance in the telecom sector.

18. (U) The NTC's pro-business (rather than pro-consumer) outlook merits emphasis. The NTC desires profitable industry players, and it frowns on the cutthroat competition that it has seen in the mobile services market the past year. Securities analysts also suggest that the NTC's reluctance to force concession conversion flows in part from its desire to avoid crippling TOT. To the Commissioners, an independent and healthy TOT is necessary for a healthy Thai telecom industry. By the same thinking, forcing private operators to accelerate payments currently scheduled to be paid out of future revenues as proposed before the Commission was formed, would likewise risk imposing an impossible burden on the private firms. Thus, in dealing with the question of concession conversion, the NTC has clearly attempted to find an answer that accommodates the interests of both the SOEs and the private operators, at least in the short-term.

#### CHOOSING LICENSES OVER CONFLICT

¶9. (U) The path of least resistance that the NTC has chosen is to leave the existing concessions in place while issuing new licenses that provide both an incentive and the mechanism for the gradual unwinding of the concessions. The NTC announced accordingly that it would not interfere with existing concessions. The NTC has issued Type I telecom licenses (for operators without their own networks) to 18 operators, beginning with its first license to KSC Commercial Internet Public Company Limited in June 2005. It has issued 6 Type I and Type III telecom licenses under the Telecommunications Business Act to TOT and CAT on August 4, 2005, which was also the 122nd anniversary of National Telecommunications Day. The licenses granted cover the existing telecommunications services operated by the two incumbent operators. The licenses to TOT were fixed-line, ISDN, 470 MHz, 900 MHz mobile phone, Internet, trunk mobile, paging, international phone, leased line, audiotext, and card phone services. The licenses granted to CAT covered CDMA, 800, 1800, maritime and aviation radio, trunk mobile, satellite communications, international phone, data communications, and Internet services.

¶10. (U) The legal reasoning underlying the NTC's decision to leave the concessions in place is that, contrary to assertions of reformers, any attempt to force conversion would be open to strong legal challenge. According to one of the Commissioners, who is a lawyer by training, a careful reading of Thai law as written does not substantiate the view that the Telecommunications Business Act (TBA) of 2001 is necessarily incompatible with the existing access fee regime. The TBA (specifically Section 80) provides that concessionaires may continue their operations until the end of their concessions under the same conditions and that the concessionaires are subject to the rules of the NTC, which are prescribed to promote free and fair competition.

¶11. (U) As a practical matter, the NTC sought to stay out of court. While the NTC can issue regulations, operators and other interest groups have recourse to the courts to challenge those regulations. These courts include the Administrative Court, which rules on the appropriateness of government agencies, and the Constitutional Court, which would have jurisdiction because the Thai Constitution specifically stipulates that the telecom concessionaires can continue to operate until the expiration of their concessions, and that changes to the concession agreements

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cannot have a materially negative impact on their business. In short, any action drawing a legal challenge could wind up stuck in court for years, a very real prospect in view of a long-running court battle between TOT and TT&T over the concession between them. Additionally, the courts would only decide issues of legality after the NTC has issued regulations, because the NTC does not have the right to seek declaratory judgments from the Thai courts to pre-empt disputes.

SATELLITE

¶12. (U) The NTC has also moved forward with licenses for satellite services. The Commissioners held public hearings on November 2, 2005, and expect to issue licensing criteria by the end of the year. There will be three types of licenses:

Type I: Satellite Operators, i.e., satellite owners for which the licensing principles will be the same as for the Type III telecom license.

Type II: Earth-station Operators, i.e., operators running uplink and downlink facilities relaying signals to and from satellites, for which the licensing principles will be the same as for the Type II telecom license.

Type III: Satellite Service Re-Sellers for which the

licensing principle will be the same as for the Type I telecom license.

Interested companies will be able to apply before March next year. The first satellite license is expected to be awarded by June 2006. The draft criteria for Type I Satellite Operators include the qualifications set out below:

- 1) financial stability,
- 2) technical ability and experience in satellite project management,
- 3) technical ability and experience in coordination of international satellite frequencies, and
- 4) documentation to prove reservation of orbit slot(s) and plan(s) to coordinate the frequencies of the orbit slot.

Dr. Damrong Kasemset, CEO of Shin Satellite Plc, Thailand's sole commercial satellite operator, said that Shin Sat plans to apply for a license for its upcoming ThaiCom 5 satellite because the licensing fee will be lower than the concession fee it currently pays to the MICT. Shin Sat has four (4) satellites under MICT concessions: ThaiCom 1, 2, 3 and iPSTAR. ThaiCom 5 will replace ThaiCom 1, 2, and 3.

#### THIRD-GENERATION MOBILE SERVICES AND FREQUENCY ALLOCATION

¶13. (U) For retail services, the most important licenses to be issued are those for 3G services, which provide for high speed data transmission and Internet Protocol-based services.

The NTC began hearings on November 7, and anticipates setting criteria by early 2006 (although that target may be slipping) and issuing the licenses by mid-2006. Fees are expected to be in the range of 600 million baht, a substantial sum but in the aggregate far less burdensome than the revenue sharing payments that private operators currently pay to TOT and CAT. The 3G license fee will not likely be lower than 3 percent of revenue as that figure is the benchmark for telecom operators as previously defined by the NTC. Neither the cost nor the method by which 3G licenses will be allocated has been decided, however. Possibilities include an e-auction with the opening price starting at the above price and the &beauty contest model. Private telecom operators oppose the auction approach ostensibly on grounds that it is not to the utmost benefit to the consumer. NTC Commissioner Prasit Prapinmongkolkarn has said that he envisions no more than four operators, indicating a preference for domestic operators to lock up the market before it is liberalized. This view does not represent either the consensus NTC view or official NTC policy, however.

¶14. (U) One macro-level problem only now being discussed among the wider public is whether Thailand either needs or

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can really afford such a dramatic upgrade in its telecom network. Thailand's 2G network is relatively new (rapid growth in mobile phone usage occurred during the past 5 years). Capital investment in telecom networks will likely involve considerable imports of expensive equipment, in addition to the high expense generally. Nokia Thailand has, for example, announced that it expects investment in 3G cellular networks by local telecom operators to exceed Baht 17 billion in the next three years. The market demand for 3G is not self-evident, however. The hearings on November 7th attended by econoff consisted mostly of NTC officials and NTC-sponsored panelists pitching the uses of 3G.

¶15. (U) As the reality of 3G's high cost sets in, telecom operators have attempted to position themselves as moving to roll out 3G services but with varying degrees of commitment to specific timelines. Prior to the NTC's formation, TOT obtained permission to offer 3G cellular services through its Thai Mobile joint venture (with CAT), but only after the NTC has issued the 3G licensing framework. Market leader Advanced Info Service Plc (AIS), considered the only operator capable of financing 3G rollout on its own, has announced plans to launch the services in the third quarter of 2006.



Number-two operator Total Access Communications (TAC, operator of DTAC), backed by Norway's Telenor (REF B), has announced continued expansion of its 2G network next year with investment in 3G over the course of the next three to four years. CAT is depending upon Huawei Technologies to complete the installation of the first 800 CDMA base stations this year to position its CAT-Hutchison joint venture in the forefront of the 3G market next year after licenses are issued. The project has been marked by delays and Embassy contacts have reported difficulties in obtaining the necessary approvals to import equipment in a timely manner, but the company says that it is catching up.

¶16. (U) True Corporation (whose TA Orange unit has applied for a 3G license to offer trial services) lacks a declared foreign backer to finance investment in 3G. The company has announced that it desires to launch 3G services by the end of 2006, but it is not clear that the company will be able to go it alone, notwithstanding its recent 12 billion baht takeover of United Broadcasting Corporation, Thailand's largest pay-television operator, and KSC Internet. Unlike the other telecom operators, True has long considered itself a media company and seeks to offer the triple play of voice, broadband internet, and multimedia TV programming.

¶17. (U) The unpredictable variable in the 3G and satellite licensing process continues to be the regulatory environment for the frequency allocation process. Under current law, frequencies (such as those for 3G and satellite) are to be allocated by a joint committee consisting of representatives from the NTC and the as yet unformed National Broadcasting Commission (NBC). Until the Central Administrative Court's November 2005 decision that the NBC selection process in train was unconstitutional, it appeared that the NBC would come into existence in time for 2006 issuances. The government of Prime Minister Thaksin Shinawatra initially considered pushing for an amendment to the Frequency Allocation Act that would empower the NTC to temporarily takeover the NBC's duties, a move backed by some private operators, most notably True Corporation. Strong opposition (outside of the telecom sector) stemming from political concerns about press freedom and the erosion of checks and balances generally under the current government surfaced immediately. At the end of November 2005, the Cabinet decided to appeal the Central Administrative Court's ruling that the NBC selection process was illegal rather than to press for amendment to the law. While it is possible that the NTC may act on its own in the event of significant delay or emergency, the most likely consequence of the NBC fight will be continued muddle and delay. One likely possibility is some sort of permission for operation on a trial basis (3G applications by AIS, DTAC, True, and TT&T are pending). The NTC has supported the principle of issuing a license to existing operators on the grounds that no new frequency allocation is involved. Thus, the NTC may go ahead and issue a satellite license to Shin Satellite because the firm

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already has four satellites and thus no change in frequency allocation will be required. New entrants would have to wait.

¶18. (U) Long-term, the most important consequence of not amending the law or the constitution and moving forward with two regulators\*one for telecom and one for broadcast\*is to open the possibility for conflict over jurisdiction in the era of media convergence. Such is the view of a knowledgeable attorney handling a large number of telecom-related work with whom we spoke. Leaving aside broad political concerns about checks and balances (especially the notion that avoiding concentrated regulatory power renders the system less vulnerable to corruption), he emphasized that as far as industry participants are concerned, the result can be regulatory gridlock. He specifically criticized the NTC's likely preference for establishing a joint committee with the NBC to deal with convergence and overlap issues. It may be administratively convenient from the regulator's

point of view but it would be slow-moving from the industry perspective. Hence, True Corporation,s preference for a one-stop shop, for example. A dual regulator is not a common design, and he warned that US and other foreign companies operating in Thailand may encounter gridlock, delay, and confusion in dealing with regulatory issues going forward.

#### COMPETITIVE ENVIRONMENT AND UNANSWERED QUESTIONS

¶19. (U) In the market for mobile services, as operators seek to meet their targets for the year, another round of price-cutting in which DTAC is performing well appears to be in play. One estimate by KResearch points to an 8.6 percent growth in mobile phone users for 2005 and predicts growth of 6.7 percent next year. The same study estimates that mobile phone subscribers at 45 percent of the population, but it notes that the average income per number has shown a drop of about 11 percent year over year.

¶20. (U) The NTC is pressing for more international Internet gateway (IIG) licenses so as to further liberalize the market. TT&T has announced plans to enter the market, and indications are that public utilities may further shake up the market. The Metropolitan Electricity Authority is testing ultra-broadband services in connection with Free Internet and Company. EGAT Plc, the state-owned electric power producer, which possesses fiber-optic cables integrated with its power cables, has set up a subsidiary EGAT Telecom, although the November 2005 suspension of EGAT,s partial privatization may delay plans to enter the telecom market.

¶21. (U) On December 19, 2005, the NTC approved a draft code of competition. The NTC must still consult with telecom operators and licensees, but the code is expected to be effective in mid-2006. The most notable feature is a 35-percent threshold set for NTC licensees across all markets for market dominance. The idea is to prevent major cash-rich players from abusing their power and forcing small players to drop out of the market and to ensure quality service. What the impact will likely be on prices is unclear.

¶22. (U) The NTC also moved in other areas in December 2005. With respect to Voice over Internet Protocol (VoIP), the NTC agreed to free up the PC to PC and PC to phone markets for ISPs operating under its licenses (without needing to apply for a separate license), but not the phone to phone market. The NTC also agreed to free up the domestic Internet exchanges and the international Internet gateway, but only on existing networks. The basic principle for license fees for either domestic or Internet gateway license is 3 percent of annual revenue. The NTC has not decided to open up the international call service market. The NTC also agreed to grant a type-two license to BMCL Network, a subsidiary of the subway operator Bangkok Metro Plc, to operate a telecom network-leasing service in the subway. The NTC has not yet granted the request of EGAT Telecom for a license which it needs to offer a nationwide fiber-optic network leasing service.

¶23. (U) Regarding the prospects for privatization of TOT and CAT, a fundamental aim of reformers for years (covered in REF

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C), the mid-November 2005 decision of the Supreme Administrative Court to suspend the partial privatization of EGAT (REF D) will likely have the effect of further delaying SOE privatization in the telecom sector. At issue are complex legal questions regarding the corporatization process whereby state assets are transferred to a SOE to be privatized. In practice, 2007 now appears to be a distinct possibility, assuming that sufficient investor interest exists for a successful public offering of shares. One recent change is the RTG,s revival of the idea of merging TOT and CAT. Sora-at Klingpratoom, ICT Minister, recently announced that the interagency consensus within the RTG supports a merger after TOT and CAT are listed on the stock

market.

¶24. (U) While the NTC has cleared away a great deal of uncertainty surrounding the regulatory environment, important questions remain. After addressing 3G and satellite licensing, it is expected to take up outstanding questions on liberalization of the international gateway, liberalization of VoIP, and determination of the interconnection charge regime. Additionally, as one telecom analyst recently indicated, it is likely that 3G rollout will continue to generate new questions as operators grapple with just how use of 2G equipment (covered by concession agreements) will square with provision of 3G services (covered by NTC licenses). The stunning 4 percent USO fee also raises important questions, not least just what the NTC will do with the money raised. Some observers such as Dr. Somkiat of TDRI have criticized the NTC for a lack of due process in comparison with the practice of regulatory bodies in other countries. Without question, regulation in the ordinary sense of the term is relatively new to both the telecom sector and Thai governance generally, and it will take time to establish transparency in regulation, particularly in view of the widespread suspicion that the regulatory deck is stacked in favor of telecom companies associated with the Shin Corporation, owned by the family of Prime Minister Thaksin.

¶25. Both the Thai media and Embassy contacts have recently speculated that the Shinawatra family will sell its holdings in AIS or its Shin Corporation parent company, to Singapore Telecom, for example. The Embassy understands from a source close to Prime Minister Thaksin that he has voiced the possibility in private, but we are not aware of any specific plan for such sale. Shin Corporation itself has publicly denied all reports of plans. The Embassy does not expect the Democrat Party opposition to object to any such sale, should the possibility materialize. Embassy contacts generally unhappy with the Thaksin government have suggested that the main reason why the Shinawatra family would sell its telecom holdings is that it had found more profitable opportunities, for example in the energy sector. Telecom industry insiders have expressed their doubts about such speculation, however, because they consider that AIS and other Shin Corp holdings have the potential to remain highly profitable.

#### COMMENT

¶26. (U) EVALUATION: Over the course of its first year the NTC has made more progress toward establishing a clear regulatory framework for Thailand's telecom sector than at any other time. In embracing this challenge as they have, the NTC Commissioners have chosen their political battles carefully with an eye to reaffirming the NTC's position as the regulator of the industry. This pattern of avoiding conflict is most apparent in the decision to issue new telecom licenses without forcing concession conversion, which amounts to paying off TOT and CAT. In economic terms, however, encouraging the unwinding of concessions by way of migrating subscribers from 2G to 3G services wastes resources needlessly. If investment in the Thai telecom sector goes forward as currently envisioned, Thailand's telecom operators will abandon their 2G infrastructure before the end of its useful life, and in advance of a clear economic need for the rollout of 3G, all for the purpose of reducing their regulatory fee burden. In view of the high percentage of imported content in telecom network infrastructure, the

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premature migration to 3G is also wasteful of foreign exchange. Continued deadlock over the formation of the NBC and the high costs of launching 3G may, however, delay both NTC issuance of licenses and the pace of 3G rollout.

¶27. (U) FTA: We agree that the RTG will likely bring its regulation of the telecom sector into line with the WTO standards for liberalization effective at the beginning of



2006 as promised. We see no practical effect, however, as the markets affected are already mature and they do not include services in play such as mobile telephony. The pattern evident in the timing of liberalization of the Thai telecom sector is that the RTG tends to open up a market after strong domestic players have established themselves firmly in the market. Despite the possibility of some delay in issuance of licenses, we expect the same pattern to hold for 3G services. We expect that the RTG delegation to the FTA talks will follow the lead of the NTC and that Thai negotiators will be hesitant to reach final agreement on services for which the regulatory regime is not settled, although the signs have become more encouraging for VoIP and satellite. We think that the successful launch of iPSTAR in August 2005, which will provide a boost for the Shin Corp going forward, may ease some of the anxiety about foreign competition that informs RTG policy. Longer term, we think that concerns about the potential for regulatory gridlock resulting from the emergence of two regulators, one for telecommunications and one for broadcast, are well-founded.

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